

No. 12938

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United States  
Court of Appeals  
For the Ninth Circuit.

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UNION SULPHUR AND OIL CORPORATION,  
a Corporation,

Appellant,

vs.

W. J. JONES & SON, INC., a Corporation,  
Appellee.

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Apostles on Appeal

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Appeal from the United States District Court,  
for the District of Oregon.



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## INDEX

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD

WOOD, MATTHIESSEN & WOOD,  
ERSKINE WOOD, and  
ERSKINE B. WOOD,

Yeon Building,  
Portland, Oregon,

Attorneys for Appellant.

KRAUSE, EVANS & KORN, and  
GUNTHER F. KRAUSE,

Spalding Building,  
Portland, Oregon,

Attorneys for Appellee.





In the District Court of the United States for the  
District of Oregon

Civil No. 5200

ALLAN MARSHALL,

Libelant,

vs.

STEAMSHIP "HERMAN FRASCH," Her Boil-  
ers, Engines, Tackle, Apparel and Furniture,  
Respondent,

UNION SULPHUR AND OIL CORPORATION,  
a Corporation,

Claimant and Petitioner,

vs.

W. J. JONES & SON, INC., a Corporation,  
Respondent.

### PRE-TRIAL ORDER

Appearances:

Proctor for Libelant:

PAUL R. HARRIS,

Proctors for Respondent, Steamship Herman  
Frasch, and Claimant and Petitioner, The  
Union Sulphur Company, Inc.:

WOOD, MATTHIESSEN & WOOD,  
ERSKINE B. WOOD, and  
ROBERT L. DRESSLER.

Proctor for W. J. Jones & Son, Inc., a corporation, Respondent:

GUNTHER F. KRAUSE.

### Nature of Action

This is a libel in rem brought by the libelant against the steamship Herman Frasch, which has been claimed by The Union Sulphur Company, Inc., for personal injuries received by libelant and is based generally upon the theory of unseaworthiness of the steamship Herman Frasch and negligence of the owners of said vessel resulting in said injuries to libelant. The respondent, W. J. Jones & Son, Inc., a corporation, was impleaded by The Union Sulphur Company, Inc., now known as the Union Sulphur and Oil Corporation and hereinafter so called, claimant of the steamship Herman Frasch for the purpose of compelling it to contribute to or pay in whole any damages which may be decreed against The Union Sulphur and Oil Corporation on behalf of the libelant.

### Admitted Facts

1. That the libelant is a resident of the United States and the District of Washington, residing near Camas, Washington.

2. That the steamship Herman Frasch is an American steamship and during the pendency of process in this suit was within the District of Oregon and within the jurisdiction of the United States District Court for the District of Oregon.

3. The Union Sulphur and Oil Corporation,

claimant and petitioner herein, is, and at all times herein mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and is the owner of the steamship Herman Frasch.

4. W. J. Jones & Son, Inc., is, and at all times herein mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of Oregon with an office and a principal place of business in the City of Portland, Oregon.

5. That on or about the 13th day of October, 1949, the libelant was employed as a longshoreman by and under the direction of the W. J. Jones & Son, Inc., Stevedoring Co., who were unloading the ship as independent contracting stevedores under contract with the claimant, in and about the steamship Herman Frasch then lying alongside Terminal No. 2 and Dock in the City of Vancouver, Washington, and within the navigable waters of the Columbia River within the said Port of Vancouver, and within the State of Washington.

6. That on or about the 13th day of October, 1949, the libelant was directed by his employer to descend into the lower hold of No. 3 hatch of said vessel preparatory to assisting and discharging cargo therefrom, and while the libelant was using and descending upon a certain steel ladder which was permanently fastened to the after portion of said No. 3 hatch as a means of descending to said hold, one of the rungs of said ladder, which was unseaworthy at the time of the accident, gave way and libelant was precipitated into the hold of said

No. 3 hatch a distance of approximately 15 feet resulting in injuries to libelant.

7. That the accident complained of and the cause of action arising therefrom and upon which this libel is based, as well as the claim for recovery over by claimant against the impleaded respondent, are within the jurisdiction of the above-entitled court.

8. Hospital and medical services in the amount of \$393.60 were incurred in connection with libelant's injuries.

### Contentions of Libelant

Libelant contends that said accident was caused without any contributing fault or neglect on his part by the defective, unsafe and unseaworthy condition of the vessel, and by the fault and negligence of the master and crew of said steamship in the following, among other particulars:

1. In that the rung of said steel ladder, which broke and gave way as above set forth, was old, worn out, defective and of improper strength at the time of the accident complained of and for a long period of time prior thereto, all of which resulted in said vessel being in an unseaworthy and defective condition at the time of said accident and for a long period of time prior thereto, and therefore, said ladder did not have firm and sufficient rungs to support the weight of libelant and other workmen employed to use said ladder for the purpose for which it was intended.

2. In that the master, owners, or charterers of said steamship failed and neglected to warn libelant

or his employer of the danger which existed due to the unseaworthy manner in which said rung of said steel ladder was maintained although the said vessel and its owners, master and charterers well knew of said unsafe and dangerous condition of said rung or should have known thereof.

3. In that the master, owners or charterers of said vessel, carelessly and negligently directed the libelant to work in an unreasonably defective and dangerous place where he was exposed to the extreme danger of being precipitated into said hold, due to the unseaworthy manner in which said rung of said ladder was maintained.

4. That the master, owners or charterers of said steamship carelessly and negligently failed and neglected to furnish, supply and use safe and adequate rungs in said steel ladder.

Libelant contends that by reason of the foregoing premises, while he was in the act of descending said ladder, he was violently precipitated into the hold of said vessel and received the following injuries which he claims were severe and permanent and will cause libelant to suffer severe and physical pain and mental anguish:

(a) The muscles, ligaments, tendons and nerves of libelant's back were severely injured, bruised and strained and libelant suffered a severe lumbo sacral strain and sprain.

(b) The muscles, ligaments and tendons of libelant's head were severely injured and bruised.

(c) The libelant received severe internal shock and injuries.



(d) Libelant received a severe shock to his nervous system.

(e) That as a result of said injuries, libelant suffers severe headaches.

(f) That prior to said accident, libelant had congenital deformities of his back and as a result of said accident, said condition was severely aggravated and all of which will retard libelant's recovery.

(g) That prior to said accident, libelant had a congenital pilonidal cist or sinus and as a result of said accident, said condition was severely aggravated and became actively infected, all of which necessitated a surgical operation.

(h) That libelant has lost  $6\frac{1}{2}$  months wages at the rate of \$300 per month for which he claims damages in the sum of \$1950.00.

Libelant further contends that at the time he received said injuries he was a longshoreman by occupation earning a salary of approximately \$300.00 a month and that as a result of said injuries libelant's earning capacity will be permanently reduced and impaired and that by reason of the foregoing injuries and damage to libelant, he has been damaged in the sum of \$25,000.00.

Libelant denies the contentions of claimant and of impleaded respondent except as admitted in libelant's contentions or in the admitted facts.

Contentions of Claimant and Petitioner, the Union Sulphur and Oil Corporation, as Against Libelant.

1. Claimant denies the foregoing contentions of

the libelant except as admitted in the admitted facts or as hereinafter admitted.

2. Claimant contends that the unseaworthy condition of the ladder did not exist at the time the vessel was turned over the stevedores for unloading, that at the time the vessel was turned over to the stevedores for unloading the ladder was suitable for use, and that the weakness in the ladder which caused it to give way while libelant was descending the ladder was caused after the vessel was turned over to the stevedores for unloading, and was caused by the stevedores themselves fastening their gear lines to the ladder or dragging their lines across the ladder, which weakened it.

3. Claimant contends that the injuries are not permanent.

4. Claimant contends that libelant's injuries were caused or contributed to by his own negligence in not observing the condition of the ladder and in not testing it in any way for strength, and in using that ladder at all when another and safer method of descending into the hold, to wit, a ladder through the escape hatch in the forward part of the hold, was available to him which was protected by heavy ship frames from damage, and which is customarily used in descending into the hold, and which was available to libelant.

5. Claimant alleges that libelant's injuries were caused or contributed to by his own negligence in using the ladder which gave way, when he knew or should have known that his employer had been improperly using the ladder to fasten the lines to,

and placing a strain upon the ladder, and in other ways misuing it which would weaken it.

Contentions of Claimant, the Union Sulphur and Oil Corporation, as Against Impleaded Respondent W. J. Jones & Son, Inc.

Claimant contends as follows:

1. Said steamship Herman Frasch was turned over to impleaded respondent as independent contracting stevedores for the purpose of unloading on or about October 1, 1949, and thereafter impleaded respondent was in sole and complete charge of the holds of said steamship.

2. At the time said steamship was turned over to impleaded respondent for unloading, namely on October 1, 1949, said steel ladder from which libellant was precipitated into No. 3 hold was suitable for the use for which it was intended.

3. Impleaded respondent negligently and carelessly misused said steel ladder in the following, among other, particulars:

(a) Impleaded respondent attached drag lines to said ladder and to the uprights and rungs thereof or either of them for the purpose of obtaining favorable leads to its drag which was used for trimming sulphur into the square of the hatch, thereby placing great strains upon said ladder, which strains were far greater than said ladder was designed to withstand.

(b) Impleaded respondent permitted its drag line and other lines to work and chafe along and across the face of said ladder and the uprights thereof, thereby violently shaking said ladder and



placing upon it strains which it was not designed to withstand.

(c) Impleaded respondent carelessly and negligently permitted its heavy clamshell bucket to strike said ladder frequently.

4. As a result of said misuse of said steel ladder the same was damaged and weakened and the joints between the rungs and the uprights thereof were damaged and weakened.

5. The negligent and careless acts of impleaded respondent as alleged in Paragraphs 3 and 7 of these Contentions, together with the negligent and careless acts of libelant as alleged in claimant's contentions as against libelant were the proximate causes of said accident to libelant.

6. No acts or omissions on the part of claimant in any way contributed to said accident to libelant.

7. Impleaded respondent was negligent and careless in that it permitted libelant to descend into No. 3 hold by the ladder which gave way when there was another and safer ladder available at the forward end of said hold protected from damage by heavy ship frames, which impleaded respondent well knew or should have known.

8. Claimant denies the contentions of impleaded respondent except as admitted in the admitted facts or as admitted in claimant's contentions as against impleaded respondent.

#### Contentions of W. J. Jones & Son, Inc.

Respondent W. J. Jones & Son, Inc., a corporation, contends that the injuries sustained by libelant

resulted solely from the unseaworthiness of the steamship Herman Frasch and the negligence of said vessel, her master, officers and owner in the following respects:

1. The ladder in the after part of the No. 3 hold of said vessel was old, rusted, oxidized and worn to such an extent that the rung which pulled out at the time of libelant's fall was attached to the uprights of the ladder by only a small edge of metal.

2. In that the ladder was improperly constructed because the rungs in said ladder were not firmly welded to the uprights and the ends of the rungs had not been champferd.

3. In that the owner, master and officers failed to inspect the said ladder before turning it over to respondent for discharge of the sulphur and in failing to warn respondent and libelant of the defective condition of the ladder.

This respondent denies the contentions of libelant and of claimant except as admitted in the admitted facts or as they coincide with the contentions of this respondent.

#### List of Exhibits of the Union Sulphur and Oil Corporation

1. Two photographs of ladder uprights on SS Herman Frasch.

2. Motion picture film showing stevedores' operation on SS Herman Frasch.

3. Steel Shackle.

4. Stevedore Damage Report, October 12, 1949.
5. Stevedore Damage Report, October 13, 1949.
6. Log book.
7. Earning records of libelant.
- List of Exhibits of W. J. Jones & Son, Inc.
- 8, a, b & c. Two photographs of ladder.
9. Rung.
10. Set of X-rays.

Based upon the hearing before this Court and the Court being fully advised in the premises,

It Is Hereby Ordered that the foregoing constitutes the Pre-trial Order in the above-entitled action and that the foregoing Order supersedes the pleadings and said Pre-trial Order shall not be amended in the trial except by consent or by the Order of the Court to prevent manifest injustice.

Dated this 18th day of October, 1950.

/s/ GUS J. SOLOMON,  
Judge.

/s/ PAUL R. HARRIS,  
Proctor for Libelant.

WOOD, MATTHIESSEN &  
WOOD,  
Proctors for Claimant.

/s/ GUNTHER F. KRAUSE,  
Proctors for Impleaded  
Respondent.

[Endorsed]: Filed October 18, 1950.

[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case came on for trial before the Court October 18, 1950. Libelant appeared in person and by his proctor Mr. Paul R. Harris. Claimant and Petitioner, Union Sulphur and Oil Corporation, successor to The Union Sulphur Company, Inc., appeared by Wood, Matthiessen & Wood and Erskine B. Wood, of its proctors, and Impleaded Respondent W. J. Jones & Son, Inc., appeared by Mr. Gunther F. Krause, of its proctors.

At the outset of the trial the libelant agreed with claimant and petitioner to a compromise settlement of libelant's claims for the sum of \$6110.00. It was stipulated between claimant and petitioner and the impleaded respondent that settlement for the sum of \$6110.00 to be paid to libelant was reasonable as to amount, and that the impleaded respondent had no objection to claimant and petitioner making such settlement, and that such settlement might be made without prejudice to the claim of claimant and petitioner against the impleaded respondent for indemnity or contribution. The case thereafter proceeded to trial upon the remaining issues raised by the claim of claimant and petitioner against W. J. Jones & Son, Inc., the impleaded respondent for indemnity or contribution. Testimony and exhibits on behalf of both parties were received in evidence and the Court having heard and considered the testimony and

having examined and considered the exhibits, and having heard and considered the arguments of counsel, and being advised in the premises, does hereby state its

## Findings of Fact

### I.

Libelant is a longshoreman by occupation, a resident of the United States and the State of Washington, residing near Camas, Washington. The steamship Herman Frasch is an ocean-going Liberty type vessel owned and operated by Union Sulphur and Oil Corporation, the claimant and petitioner. Claimant and petitioner is a corporation organized under the laws of the State of Delaware, and is the successor to The Union Sulphur Company, Inc. W. J. Jones & Son, Inc., is a corporation organized and existing under the laws of the State of Oregon, and is engaged in the business of stevedoring operations and loading and discharging ships as an independent stevedore contractor.

### II.

On or about October 13, 1949, the steamship Herman Frasch was lying alongside the dock at Terminal No. 2, Vancouver, Washington, on the navigable waters of the Columbia River. A cargo of bulk sulphur was being discharged from the vessel. W. J. Jones & Son, Inc., the impleaded respondent, was unloading the vessel as independent contracting stevedore. Libelant was working aboard the vessel as a longshoreman in the employ of



W. J. Jones & Son, Inc. W. J. Jones & Son, Inc., had been discharging sulphur from the vessel on the previous day in the harbor of Portland, Oregon.

### III.

On October 13, 1949, libelant, acting under the orders and directions of his employer, the stevedore company, descended into No. 3 lower hold. Libelant was descending into the hold by means of a steel ladder permanently fastened to the after end of the No. 3 hatch. The ladder consisted of two steel uprights with welded steel rungs. At the time libelant was descending into No. 3 hold most of the sulphur cargo in the hold had already been discharged by the impleaded respondent stevedore company and the sulphur was only a few feet deep at the bottom of the hold. When libelant was part way down the ladder one of the rungs of the ladder gave way and he fell approximately 15 feet into the hold, resulting in serious injuries.

### IV.

The Court finds that the weld by which the steel rung was welded to the vertical uprights of the ladder was defective. However, prior to the day of the accident the weld, although defective, had supported many men who had used the ladder for climbing in and out of the hold, and the Court finds that at the time the vessel was turned over to the stevedore company for the purpose of discharging the cargo the weld was sufficiently strong to support

men heavier than libelant climbing up and down and using the ladder, and that the ladder could have been used by men climbing up and down it, and the accident would not have occurred except for a further weakening of the ladder caused by the impleaded respondent as hereinafter set forth.

## V.

The Court finds that prior to the accident the impleaded respondent stevedore company, in connection with the discharging of the sulphur, had used a clamshell bucket and had also used a drag to drag the sulphur from the wings and trunks of the hatch into the square of the hatch and had used wire cables known as drag lines for the purpose of pulling the drag into the square of the hatch, and had also used drag lines and blocks for the purpose of obtaining favorable leads to the drag. The Court finds that the impleaded respondent stevedore company had, prior to the accident, used the ladder for obtaining leads to its drag lines. This placed heavy and excessive strains upon the ladder at and near the point where the rung gave way and also caused it to shake and vibrate excessively and caused the ladder to be further weakened and loosened at said point. The ladder, which was part of the permanent structure of the vessel, was not designed or intended to be subjected to the heavy and excessive strains which were placed upon it by impleaded respondent stevedore company. It was not good stevedoring practice for the stevedore

company to use the ladder for this purpose and to subject it to heavy and excessive strain and vibration by means of its drag lines.

## VI.

The Court finds that the accident and libelant's injuries were proximately caused by the defective weld by which the rung was welded to the uprights of the ladder, combined with the further weakening and loosening of the rung resulting from the stevedore company's improper use of the ladder. The Court finds that the vessel was unseaworthy in that the weld of the rung to the uprights of the ladder was defective, but that this unseaworthiness would not itself have caused the accident except for the joint and concurring negligence of the impleaded respondent stevedore company in causing the rung to be further weakened and loosened.

## VII.

The Court finds that libelant's injuries were proximately caused by the joint and concurring negligence of the vessel Herman Frasch and of the impleaded respondent, W. J. Jones & Son, Inc.

Based upon the foregoing Findings of Fact, the Court makes the following

### Conclusions of Law

1. The respondent vessel Herman Frasch was liable to libelant for the full amount of his damages.

2. The amount paid by claimant and petitioner Union Sulphur and Oil Corporation to libelant in



full settlement of libelant's claims was not in excess of a reasonable amount for libelant's damages.

3. Libelant's injuries proximately resulted from the joint and concurring negligence of the ship (and its owners, claimant and petitioner) and the impleaded respondent W. J. Jones & Son, Inc.

4. Although libelant's injuries were proximately caused by the joint and concurring negligence of the ship and the impleaded respondent, claimant and petitioner's demand for indemnity or contribution over and against the impleaded respondent should be denied upon authority of *American Mut. Liability Ins. Co. vs. Mathews*, 182 F. 2d 332, 2 Cir., and in conformity with *Johnson vs. U. S.*, 79 F. Supp. 448 (1948).

5. The claims of the libelant have already been fully discharged and satisfied by claimant and petitioner through payment of \$6110.00 in compromise settlement. The impleaded respondent W. J. Jones & Son, Inc., is entitled to a decree dismissing the claim of claimant and petitioner for contribution or indemnity, and the impleading petition should be dismissed with prejudice and without costs to any of the parties.

Dated this 15th day of March, 1951.

/s/ GUS J. SOLOMON,  
Judge.

[Endorsed]: Filed March 15, 1951.

In the United States District Court  
for the District of Oregon

Civil No. 5200

ALLAN MARSHALL,

Libelant,

vs.

STEAMSHIP "HERMAN FRASCH," Her Boil-  
ers, Engines, Tackle, Apparel and Furniture,  
Respondent,

UNION SULPHUR AND OIL CORPORATION,  
a Corporation,

Claimant and Petitioner,

vs.

W. J. JONES & SON, INC., a Corporation,  
Impleaded Respondent.

### DECREE

This case came on for trial before the court on October 18, 1950. Libelant appeared in person and by his proctor, Mr. Paul R. Harris. Claimant and petitioner, Union Sulphur and Oil Corporation, successor to The Union Sulphur Company, Inc., appeared by Wood, Matthiessen & Wood and Erskine B. Wood, of its proctors; and impleaded respondent, W. J. Jones & Son, Inc., appeared by Mr. Gunther F. Krause, of its proctors.

At the outset of the trial the libelant agreed with claimant and petitioner to a compromise settlement

of libelant's claims for the sum of \$6,110.00. It was stipulated between claimant and petitioner and the impleaded respondent that settlement for the sum of \$6,110.00 to be paid to libelant was reasonable as to amount, and that the impleaded respondent had no objection to claimant and petitioner making such settlement, and that such settlement might be made without prejudice to the claim of claimant and petitioner against the impleaded respondent for indemnity or contribution. The case thereafter proceeded to trial upon the remaining issues raised by the claim of claimant and petitioner against W. J. Jones & Son, Inc., the impleaded respondent for indemnity or contribution. Testimony and exhibits on behalf of both parties were received in evidence and the court having heard and considered the testimony and having examined and considered the exhibits, and having heard and considered the arguments of counsel, and being advised in the premises and having made and filed its Findings of Fact and Conclusions of Law,

It is now here Ordered and Decreed :

1. That the respondent vessel "Herman Frasch" was liable to libelant for the full amount of his damages and that the amount paid by claimant and petitioner Union Sulphur and Oil Corporation to libelant in full settlement of libelant's claims was not in excess of a reasonable amount for the injuries and damages sustained by libelant.

2. That the libel be and it hereby is dismissed as to respondent steamship "Herman Frasch," the

claimant and petitioner Union Sulphur and Oil Corporation, and the impleaded respondent W. J. Jones & Son, Inc., without costs to any of the parties.

3. That the petition of Union Sulphur and Oil Corporation against W. J. Jones & Son, Inc., be and the same hereby is dismissed without costs to either party.

Dated this 16th day of March, 1951.

/s/ GUS J. SOLOMON,  
Judge.

Service by copy acknowledged.

[Endorsed]: Filed March 16, 1951.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

To W. J. Jones & Son, Inc., a corporation, Impleaded Respondent, and Gunther F. Krause, its proctor:

Notice is hereby given that claimant and petitioner, Union Sulphur and Oil Corporation, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final decree entered herein on the 16th day of March, 1951, by which decree claimant and petitioner was denied recovery against impleaded respondent by way of indemnity or contribution to the sum of \$6,110.00 paid by

claimant and petitioner in full settlement of the claims of libelant. On this appeal, the appellant does not seek any review of the facts as found by the trial court, but desires only a review of the question whether, on the facts as found by the trial court, appellant is entitled to indemnity or contribution from and against impleaded respondent.

Dated this 27th day of April, 1951.

WOOD, MATTHIESSEN &  
WOOD,

/s/ ERSKINE B. WOOD,  
Proctors for Union Sulphur and Oil Corporation,  
Claimant and Petitioner.

Service of copy acknowledged.

[Endorsed]: Filed April 30, 1951.

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[Title of District Court and Cause.]

### PETITION FOR APPEAL

Comes now Union Sulphur and Oil Corporation, claimant and petitioner herein, and prays that it may be allowed to appeal from the final decree entered in this Court and cause on the 16th day of March, 1951, to the United States Court of Appeals for the Ninth Circuit, on the grounds and for the reasons of error of law as set forth in the Assignments of Error herein filed; on this appeal petitioner does not desire a review of the facts as



found by the trial court, but desires only a review of the question of law whether, on the facts as found by the trial court, appellant is entitled to indemnity or contribution from and against impleaded respondent. Your petitioner prays that no additional appeal bond be required since petitioner has already on April 25, 1950, filed a surety company cost bond in the amount of \$250.00, which covers all costs and expenses that might be awarded in case of appeal by the appellate court, and said bond is still in full force and effect. Petitioner prays that this appeal be allowed and that the usual citation on appeal be issued to W. J. Jones & Son, Inc., impleaded respondent, and to its proctor.

Dated this 27th day of April, 1951.

WOOD, MATTHIESSEN &  
WOOD,

/s/ ERSKINE B. WOOD,

Proctors for Union Sulphur and Oil Corporation,  
Claimant and Petitioner.

Service of copy acknowledged.

[Endorsed]: Filed April 30, 1951.

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[Title of District Court and Cause.]

### ORDER ALLOWING APPEAL

Upon the petition of Union Sulphur and Oil Corporation, claimant and petitioner, and it ap-

pearing to the Court that said petitioner has a right of review upon appeal for claimed errors of law,

It Is Hereby Ordered that the appeal herein be allowed as prayed for to the United States Court of Appeals for the Ninth Circuit, and that no additional appeal bond be required.

Dated this 30th day of April, 1951.

/s/ GUS J. SOLOMON,  
Judge.

[Endorsed]: Filed April 30, 1951.

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[Title of District Court and Cause.]

## ASSIGNMENTS OF ERROR

Union Sulphur and Oil Corporation, claimant and petitioner herein, appealing from the final decree entered in this Court and cause on March 16, 1951, makes and sets out the following Assignments of Error:

### I.

The trial court erred in denying claimant and petitioner recovery from and against impleaded respondent, W. J. Jones & Son, Inc., by way of indemnity or contribution for the amount paid by claimant and petitioner to libelant in settlement of libelant's claims.

### II.

The trial court erred in ruling as a matter of law,

that on the facts as found by the trial court claimant and petitioner was not entitled to recovery against impleaded respondent, W. J. Jones & Son, Inc.

### III.

The trial court erred in ruling as a matter of law, although the impleaded respondent was guilty of joint and concurrent negligence which proximately contributed to libelant's injuries, claimant and petitioner was not entitled to indemnity or contribution over and against impleaded respondent.

### IV.

Claimant and petitioner does not allege any error with respect to the trial court's findings of fact but claims that the court erred in failing to allow claimant and petitioner's demand for indemnity or contribution from and against impleaded respondent on the basis of the facts as found by the trial court.

WOOD, MATTHIESSEN &  
WOOD,

/s/ ERSKINE B. WOOD,  
Proctors for Union Sulphur and Oil Corporation,  
Claimant and Petitioner.

Service of copy acknowledged.

[Endorsed]: Filed April 30, 1951.



[Title of District Court and Cause.]

CITATION ON APPEAL

To W. J. Jones & Son, Inc., Impleaded Respondent,  
and Mr. Gunther F. Krause, its proctor,

Greeting:

Whereas, Union Sulphur and Oil Corporation, claimant and petitioner in that certain cause in that certain cause in this Court entitled: "Allan Marshall, Libelant, vs. Steamship 'Herman Frasch,' her boilers, engines, tackle, apparel and furniture, Respondent, Union Sulphur and Oil Corporation, a corporation, Claimant and Petitioner, vs. W. J. Jones & Son, Inc., a corporation, Impleaded Respondent, Civil No. 5200," has lately appealed to the United States Court of Appeals for the Ninth Circuit from the final decree rendered in said cause in the District Court of the United States for the District of Oregon, in your favor, and has given the security required by law;

You Are Therefore Hereby Cited and Admonished to be and appear before said United States Court of Appeals for the Ninth Circuit, at San Francisco, California, within forty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand at Portland, in said Dis-

trict, this 30th day of April, in the year of our Lord, one thousand nine hunderd and fifty-one.

/s/ GUS J. SOLOMON,  
Judge.

Service of copy acknowledged.

[Endorsed]: Filed April 30, 1951.

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[Title of District Court and Cause.]

### DOCKET ENTRIES

1949

Dec. 22—Filed libel in rem.

Dec. 22—Filed stipulation for costs.

Dec. 22—Issued warrant of arrest—to marshal.

Dec. 23—Filed bond by claimant.

Dec. 23—Filed claim by owner.

1950

Feb. 2—Filed stipulation as to time in which claimant may file answer, etc.

Apr. 25—Filed answer of claimant.

Apr. 25—Filed petition to bring in W. J. Jones & Son, Inc., as 3rd party under Rule 56.

Apr. 25—Filed cost bond of claimant.

Apr. 25—Issued monition for W. J. Jones & Son under Rule 56—to marshal.

Apr. 27—Filed monition with return.

1950

- May 12—Filed libellant's answer to petition of claimant to bring in W. J. Jones & Son, etc.
- May 22—Filed exceptions to petition to bring in W. J. Jones & Son as 3rd party respondent.
- June 5—Filed substitution of proctors.
- June 5—Filed and entered order substituting Krause, Evans & Korn as proctors for W. J. Jones & Son. Fee.
- June 5—Record of hearing on exceptions to petition to bring in 3rd party respondent. Fee.
- June 26—Record of opinion. Fee.
- June 26—Filed option.
- Aug. 28—Record of pre-trial conference and order entered assigning to J. McColloch. Fee.
- Sept. 5—Entered order assigning to Judge Solomon. McC.
- Sept. 11—Entered order setting for pre-trial conference Oct. 9 and for trial Oct. 17, 1950. Sol.
- Sept. 21—Filed warrant of arrest returned unexecuted.
- Oct. 9—Record of pre-trial conference and order setting for trial Wed. Oct. 18, 1950. S.
- Oct. 12—Record of pre-trial conference. S.
- Oct. 16—Issued subpoena and 1 copy to atty. Dressler.
- Oct. 18—Filed answer of W. J. Jones & Son to petition of claimant.
- Oct. 18—Filed answer of resp. W. J. Jones & Son to the libel.
- Oct. 18—Filed and entered pre-trial order. S.

1950

Oct. 18—Record of trial before court and cont'd to  
Oct. 19, 1950. S.

Oct. 19—Record of trial—submitted. S.

Oct. 24—Filed letter citing authorities by claimant.

Nov. 18—Filed exoneration of libelant's bond by  
claimant.

Dec. 15—Filed and entered order discharging  
claimant's bond. S.

1951

Feb. 12—Record of oral opinion. S.

Feb. 14—Filed exhibits.

Mar. 15—Filed and entered Findings of Fact and  
Conclusions of Law. S.

Mar. 16—Filed and entered Decree. S.

Apr. 30—Filed notice of appeal by Union Sulphur  
and Oil Corporation.

Apr. 30—Filed petition for appeal.

Apr. 30—Filed and entered order allowing appeal. S.

Apr. 30—Filed citation on appeal.

Apr. 30—Filed assignments of error.

Apr. 30—Filed designation of apostles.

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### CERTIFICATE OF CLERK

United States of America,  
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the United States  
District Court for the District of Oregon, do hereby  
certify that the foregoing documents consisting of

Pre-Trial Order, Findings of Fact and Conclusions of Law, Decree, Notice of Appeal, Petition for Appeal, Order Allowing Appeal, Assignments of Error, Citation on Appeal, Designation of Apostles on Appeal, Transcript of Docket Entries, and Clerk's Certificate, constitute the record on appeal from a decree of said court in a cause therein numbered Civil 5200, in which the Union Sulphur and Oil Corporation is claimant and petitioner and appellant, and W. J. Jones & Son, Inc., is respondent and appellant; that the said record has been prepared by me in accordance with the designation of apostles on appeal filed by the appellant, and in accordance with the rules of this court.

I further certify that the cost of filing the notice of appeal, \$5.00, has been paid by the appellant.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 10th day of May, 1951.

[Seal]                      LOWELL MUNDORFF,  
Clerk,

By /s/ F. L. BUCK,  
Chief Deputy.

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[Endorsed]: No. 12938. United States Court of Appeals for the Ninth Circuit. Union Sulphur and Oil Corporation, a corporation, Appellant, vs. W. J. Jones & Son, Inc., a corporation, Appellee. Apostles

on Appeal. Appeal from the United States District Court for the District of Oregon.

Filed May 18, 1951.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

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In the United States Court of Appeals  
for the Ninth Circuit

No. 12938

UNION SULPHUR AND OIL CORPORATION,  
Appellant,

vs.

W. J. JONES & SON, INC.,  
Appellee.

STATEMENT OF POINTS ON APPEAL AND  
DESIGNATION OF RECORD

Appellant states the Points relied upon on appeal as follows:

1. The trial court, having found as a fact that appellee was negligent and that such negligence proximately caused and contributed to libelant's injuries, and that libelant would not have been injured except for appellee's negligence, should have granted appellant full recovery against appellee by way of indemnity.



2. The trial court found as a fact that appellee negligently subjected the ladder on appellant's vessel to improper use, and that this negligence caused and contributed to libellant's injuries, and that libellant would not have been injured except for such negligence on the part of appellee. On these facts appellant is entitled to full recovery against appellee by way of indemnity.

3. On the facts as found by the trial court, appellant is entitled to full recovery over and against appellee of the amount paid to libellant, by way of full indemnity and under the decision of this Court in *U. S. v. Rothschild Stevedoring Co.*, 1950 A.M.C. 1332, 183 F. 2d 181.

4. On the facts as found by the trial court, if appellant should not be entitled to full indemnity, then in the alternative, appellant is at least entitled to contribution from and against appellee.

Appellant designates the portions of the record material to the consideration of the appeal as follows:

1. The pre-trial order.
2. The Court's findings of fact and conclusions of law made and entered in the trial court the 15th day of March, 1951.
3. The final decree made and entered March 16, 1951.
4. Notice of appeal.
5. Petition for Appeal.

6. Order Allowing Appeal.
7. Assignments of Error.
8. Citation on Appeal.

WOOD, MATTHIESSEN &  
WOOD,  
/s/ ERSKINE B. WOOD,  
Proctors for Appellant.

Service of copy acknowledged.

[Endorsed]: Filed May 28, 1951.